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SECRETARY, BOARD OF
OIL, GAS & MINING

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Attorneys for Respondent
Co-op Mining Company

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES, STATE OF UTAH

IN THE MATTER OF THE REQUEST)	CO-OP'S RESPONSE TO
FOR AGENCY ACTION BY PETITIONERS)	PETITIONERS' REQUEST FOR
NORTH EMERY WATER USERS)	AGENCY ACTION
ASSOCIATION, HUNTINGTON-CLEVELAND)	
IRRIGATION COMPANY, and CASTLE)	Docket No. 94-027
VALLEY SPECIAL SERVICES DISTRICT)	Cause No. ACT/015/025-93B

Permittee/Respondent C.W. Mining Company d/b/a Co-op Mining Company (Co-op) responds to Petitioners' Request for Agency Action and Appeal of the Division's decision to approve revision of Co-op's permit to mine the Tank Seam as follows:

RESPONSE TO PETITIONERS'
"LEGAL AUTHORITY & JURISDICTION OF THE BOARD"
and "RELIEF REQUESTED"

Petitioners may be "Persons having interests which may be adversely affected" as defined in R645-100-200. If Petitioners are, R645-300-211 would give Petitioners a right to request a hearing of the Division's decision in this matter. Co-op denies Petitioners are entitled to the relief requested. Petitioners' Request for Agency Action is without merit and is asserted in bad faith.

Co-op requests the Board to dismiss the Petition with prejudice, and, to the extent allowed by law, to award Co-op its costs and attorney's fees against Petitioners.

**RESPONSE TO PETITIONERS'
"FACTS AND BASIS FOR RELIEF"**

Co-op responds to Petitioners' "Facts and Basis for Relief" as follows:

1. Co-op admits Castle Valley is a government entity which provides water to Huntington, Cleveland and Elmo, is without knowledge as to the number of connections or persons served and denies the same for lack of knowledge, and denies a "major portion" of Huntington City's culinary water comes from Big Bear Springs.

2. Co-op admits NEWUA provides water to an unknown number of connections in Emery County, and admits NEWUA performed some development work on Birch Springs but is without knowledge as to the amount expended or the purpose of the work and therefore denies the same for lack of knowledge.

3. Co-op admits paragraph 3.

4. Co-op denies the allegations of paragraphs 4, 5, 7-11, and 13-17. Co-op specifically denies its mining activities have resulted in any significant adverse impact on Petitioners' water rights. Petitioners' allegations regarding the impact of Co-op's past and present mining activities on Petitioner's water rights have already been adjudicated and resolved against Petitioners, and any attempt by Petitioners to reopen those issues is barred by *res judicata* and collateral estoppel. Petitioners' allegations regarding any potential impact on Petitioners' water rights caused by Co-op's future mining activities are without merit, are knowingly false, and are asserted in bad faith and for improper purposes.

5. Co-op is without knowledge of Petitioners' beliefs and denies the same for lack of knowledge, and denies the remaining allegations of paragraph 6.

6. Co-op admits the USGS reports exist and speak for themselves, admits data is collected by various entities from time to time on the area's hydrology and geology, and otherwise denies the remaining allegations of paragraph 12. Co-op specifically denies the USGS reports lend any support or credence to Petitioners' allegations regarding the impact of Co-op's past, present or future mining activities on Petitioners' water rights.

7. Co-op denies all remaining allegations of fact or law alleged by Petitioners which Co-op has not otherwise admitted.

CONCLUSION

Respondent prays for the Board to dismiss Petitioners' Request for Agency Action with prejudice, and, to the extent allowed by law, to award Respondents their costs in defending this matter, including a reasonable attorney's fee.

DATED this 9 day of September, 1994.


Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing instrument upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, with postage prepaid, to:

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Dated at Salt Lake City, Utah this 9 day of September, 1994.

A handwritten signature in cursive script, appearing to read "Mark Hansen", is written over a horizontal line.

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